IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

WP(C).No. 19373 of 2006(F)

PETITIONER:

THULASEEDHARAN THANKAPPAN,
(FORMERLY LOWER DIVISION CLERK),
VANIMEL GRAMA PANCHAYATH),
KAPLIYIL HOUSE, PUNCHAVAYAL.P.O,
VIA. MUNDAKAYAM, KOTTAYAM DISTRICT.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO

RESPONDENTS:

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1. STATE OF KERALA,
REP. BY ITS CHIEF SECRETARY,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR OF PANCHAYATHS,
THIRUVANANTHAPURAM.

3. DEPUTY DIRECTOR OF PANCHAYATHS,
KOZHIKODE.

BY ADV. SRI. NANDAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE ORDER NO. A5.2723/96(1) DATED 10.04.1996 OF THE DEPUTY DIRECTOR OF PANCHAYATS, KOZHIKODE.

EXT.P2: TRUE COPY OF THE MEMO CHARGES NO. A5.2723/96 DATED 03.03.1998 OF THE DEPUTY DIRECTOR OF PANCHAYATS, KOZHIKODE WITH THE STATEMENT OF ALLEGATIONS APPENDED.

EXT.P3: TRUE COPY OF THE DETAILED EXPLANTION TO EXT.P2 MEMO OF CHARGES.

EXT.P4: TRUE COPY OF THE ORDER NO. A5-2723/96 DATED 18.02.2000 OF THE 3RD RESPONDENT.

EXT.P5: TRUE COPY OF THE ORDER NO. D1-39921/97 DATED 23.04.2001 OF THE 2ND RESPONDENT.

EXT.P6: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONR BEFORE THE 2ND RESPONDENT DATED 01.03.2005.

EXT.P7: TRUE OCPY OF THE LETTER NO. D1.7583/05 DATED 10.04.2006 OF THE 2ND RESPONDENT.

/True Copy/

P.A to Judge.

V. GIRI , J

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W.P.(C) NO. 19373 OF 2006

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Dated this the 4th day of September, 2007.

JUDGMENT

The petitioner while working as Lower Division Clerk in Vanimel Grama Panchayat was suspended from service. The charge in Ext.P1 was essentially regarding unauthorised absence from duty. The petitioner was suspended from service for facilitating departmental enquiry. Ext.P2 contains the memo of charges with the statement of allegations served on the petitioner as part of the departmental enquiry. It is admitted by the petitioner that the enquiry, as such, has not been completed.

2. In the meanwhile, the petitioner was removed from service, pursuant to his conviction in a criminal case for the offences under Sections 363, 365, 366 A and 376(2)(g) of the Indian Penal Code in Sessions Case No.187/99 on the file of Sessions Court, Kottayam. The Sessions Court had convicted and sentenced him to undergo rigorous imprisonment for 11 years along with payment of fine. The petitioner appealed against the conviction and sentence in Crl. Appeal No. 610/2000. A Division Bench of this Court by judgment dated 20.01.2005 (reported in 2005(2) KLT 269) allowed the petitioner's

appeal, set aside the conviction and sentence and acquitted him of all the charges. The petitioner brought to the notice of the appointing authority, the fact relating to his acquittal and sought for reinstatement in service vide Ext.P6. This was declined under Ext.P7 on the premise that the acquittal has been challenged by the State Prosecutor as also by the de facto complainant in Crl. Appeal Nos. 1547/2005 and 1575/2005 before the Supreme Court. Apparently, leave has been granted by the Hon'ble Supreme Court and the appeals are pending disposal.

3. The petitioner contends that his removal from service is under the provisions of Rule 18(a) of the Kerala Civil Services (Classification, Control and Appeal) Rules 1960, and therefore, when the conviction is set aside in appeal and the government servant is acquitted of the charges, the order of dismissal or removal ceases to have effect and revised orders shall be issued forthwith to reinstate the Government servant in service entitling him to all the benefits to which he would have been entitled to, had he been in service.

4. A counter affidavit has been filed on behalf of the respondents contending essentially that the acquittal has been challenged before the Supreme Court by the State and therefore the

same is pending consideration by the Supreme Court.

5. Reference is made to the Manual of disciplinary proceedings, which apparently enables the department to take further action against the order of acquittal and also enables the department to keep in tact the disciplinary proceedings pending appeal.

6. I have heard the learned counsel for the petitioner as also the learned Government Pleader.

7. The order by which the petitioner was removed from service, Ext.P5, shows that the removal was effected pursuant to the conviction of the petitioner made by the Sessions Court for the offences under Sections 363, 365, 366 A and 376(2)(g) of the Indian Penal Code. It is admitted that the said conviction was set aside by a Division Bench of this Court and the petitioner was acquitted of all the charges. Since removal from service is in terms of Rule 18(a) of the RCS (CC and A) Rules, reinstatement in service is also contemplated and provided for in Section 18(b) of the said Rules. Removal from service on conviction by a criminal court is a statutory consequence provided under Section 18(a) and reinstatement in service, on such conviction being set aside is also a statutory consequence. It is open to the Department to initiate independent departmental proceedings,

on the same set of facts, which might also have been continued parallel to the proceedings before the criminal court. But that has not been done in the present case. There is no departmental proceedings against the petitioner. At any rate, removal from service was only under Rule 18(a) purely based on the conviction and in such circumstances Rule 18(b) provides for the consequence of reinstatement where the conviction is set aside and the delinquent government servant is acquitted of the charges against him.

8. The manual of disciplinary proceedings, referred to by the respondents in the counter affidavit can only be read in conjunction with the statutory rules which provides for reinstatement. Where the rules provide for removal of Government servants on conviction in a criminal court and the rules also provide for reinstatement in service on such conviction being set aside, the manual for departmental proceedings, which has no statutory force as such, cannot be relied upon either to vary the effect of the Rules or dilute its impact. The manual of disciplinary proceedings will have to be read only in conjunction and subject to the statutory rules in force.

9. In the circumstances, the stand taken in Ext.P7 cannot be accepted. But at the same time, I am constrained to note that the

State has preferred an appeal against the acquittal of the petitioner. I am not inclined to order that consequential benefits should be given to the petitioner, taking note of the fact that the appeals against the order of the acquittal are pending before the Supreme Court as such. But it would be neither proper nor legal to continue to keep the petitioner away from service. In fact, it would only be appropriate that the petitioner be reinstated in service and asked to serve, instead of giving rise to a situation where the petitioner could claim all consequential benefits on reinstatement, if the order of acquittal is ultimately upheld by the Supreme Court.

10. In the result, Ext.P7 is set aside and the petitioner will be reinstated in service. The 2nd respondent shall pass appropriate orders in this regard, reinstate the petitioner in service and give appropriate posting within a period of one month from the date of receipt of a copy of this judgment. I make it clear that all benefits due to the petitioner on reinstatement, for the period during which he was kept out of service, shall be disbursed to him only after the disposal of Criminal Appeals Nos. 1547/2005 and 1575/2005 pending before the Supreme Court, and subject to the decision to be taken by the Supreme Court in that regard. It is further made clear that the

petitioner will be paid wages and other benefits for the period of service after reinstatement. It is also made clear that the above direction is without prejudice to the right of the respondent to complete the disciplinary action which is initiated under Ext.P2.

The writ petition is disposed of as above.

V. GIRI, JUDGE.

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